IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2162 OF 2003

1. Union of India and
2. The Commissioner of Central
   Excise, Mumbai. ...Petitioners

V/s

Treto Chem Specialities (I) Pvt.Ltd. ...Respondents

Mr.Rajiv Chavan alonwith A.S. Rao i/b. Dr.T.C. Koushik for the Petitioners.
None for the Respondents.

CORAM : S. RADHAKRISHNAN AND A.S. AGUIAR, JJ.

DATED : JUNE 9, 2005.

P.C. :-

1. Learned Counsel Shri Chavan for the petitioners.

2. By this petition, the petitioner - Commissioner of Central Excise, Mumbai-VII challenges the order dated 23rd April, 2002 whereby the Customs, Excise, Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai had declined to condone seven days delay in filing the appeal before the said Tribunal.

3. No one is appearing on behalf of the respondents

though duly served. Affidavits of service have already been filed. We have perused the impugned order dated 23rd April, 2002 which merely states that in view of the difficulty in filing seven appeals against one Order-in-Appeal, there is delay of seven days and as such there is no sufficient ground for condoning the delay. Hence, the delay was not condoned. We have perused paras 5 and 6 of the petition which read as under :-

> "5. The Petitioners state that as there were in total 7 appeals involved in the matter, the Petitioners were required to prefer 7 Appeals to the CEGAT. The Petitioners state that the papers of the cases were put up on 4.7.2001. The concerned officer called for the case file from the Division. Since the case files did not come, on 23.7.2001, a reminder was issued. Thereafter on 2.8.2001, the files were put up alongwith the case record by the Inspector of Customs. Thereafter on 7.8.2001 the file was submitted to the Dy.Commissioner by the

Superintendent and again on 10.8.2001, the Dy.Commissioner returned the file to the Superintendent. On 14.8.2001 the Superintendent put up the file alongwith necessary case laws to the Dy.Commissioner for filing appeal. On 16.8.2001, the Dy.Commissioner directed the Superintendent to put up for filing appeal, which were put up to the Dy.Commissioner on 17.8.2001. On 20.8.2001 the Dy.Commissioner submitted the file to the Addl.Commissioner. On the same day the Addl.Commissioner submitted the file to the Commissioner of Customs, which was returned and on 21.8.2001 the Superintendent put the case file alongwith other documents and also the grounds of appeal to the Dy.Commissioner and the Dy.Commissioner signed the same on the same day and the Commissioner of Customs also approved the same. Thereafter immediately the appeal was sent to CEGAT for filing. However, the last day for filing the appeal was 21.8.2001. The Petitioners file 6 appeals on the same day i.e. within limitation. However,

in the present matter the appeal could not be filed due to the work involved in processing the matter by different officers in various stages. Hereto annexed and marked as Exhibit-D is a copy of the memo of said appeal to the CEGAT.

6. The Petitioners state that since there was the delay of 7 days in filing the appeal to CEGAT, the Petitioners also preferred an application for condonation of delay on the same day of filing the said appeal. The Petitioners pointed out that as 7 appeals were to be filed on the same day, all the appeals could not be filed in time and one appeal remained to be filed and there is a delay of 7 days for the reasons as stated above. The Petitioners prayed that the said delay may kindly be condoned. Hereto annexed and marked as Exhibit-E is a copy of the said application for condonation of delay in filing appeal before CEGAT."

4. Having regard to the facts and circumstances as

set out in paras 5 and 6, sufficient cause is made out for condoning the delay in filing the appeal.

5. In the aforesaid facts and circumstances, Rule is made absolute in terms of prayer clause (a) with no order as to costs. We direct that the appeal filed before the CEGAT be restored to file and the same be disposed of by CEGAT strictly on its own merit in accordance with law, as expeditiously as possible.

(S. RADHAKRISHNAN, J.)

(A.S. AGUIAR, J.)